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NEWPORT BEACH CA 92660

In re Application of
Tim P. Horwood et al.
Application No. 10/606,605
Filed: June 26, 2003
Attorney Docket No. HORWOOD.001C2

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OFFICE OF PETITIONS

DECISION ON
PETITION

This is a decision on the petition under 37 CFR §1.47(a), filed September 20, 2004.

The petition is **DISMISSED**.

The above-identified application was filed on June 26, 2003. At the time of filing, applicant submitted a 37 CFR 1.63 declaration signed by all of the inventors; Tim P. Horwood, Keith W. Lovell and John F. Pope. The prosecution history is as follows: a restriction requirement was mailed on March 19, 2004 with a one month shortened statutory period set for reply, subsequently, on June 10, 2004, the attorney of record filed a petition for withdrawal as attorney pursuant to 37 CFR 1.36 which was accepted and Notice of the acceptance was mailed to the first named inventor on July 14, 2004.

In response to the Restriction Requirement, on September 20, 2004, the first named inventor, Tim P. Horwood, filed an election with a five month extension of time request, a power of attorney and the instant petition under 37 CFR 1.47(a). Petitioner acknowledges that all of the inventors were responsible for reduction to practice of the subject matter of the instant application and that all inventors had executed the oath or declaration which was filed upon application, but that due to a disagreement between the parties, the attorney of record has withdrawn as their counsel and that the petitioner has been unable to secure the signature of joint inventor Keith W. Lovell on the response to the restriction requirement mailed March 19, 2004.¹

It should be noted that the signatures of all the joint inventors is also not on the power of attorney filed September 20, 2004 and thus, pursuant to 37 CFR 1.34, the attorney of record purports to only represent the interests of joint inventor Tim P. Horwood and not

¹The interests of joint inventor John F. Pope have been assigned to joint inventors Tim P. Horwood and Keith W. Lovell and recorded January 26, 2000 at Reel/Frame 0100553/0625.

the interests of joint inventor Keith W. Lovell. However, in that case, the power of attorney should not have been accepted with only the signature of Tim P. Horwood and without a petition under 37 CFR 1.182, and fee, directed to the Office of Petitions. Since the Power of Attorney has been accepted, the Office will treat the request as a petition under 37 CFR 1.182 and will charge deposit account 08-2624 the petition fee in the amount of \$130.00 for the request. See MPEP 402.10.

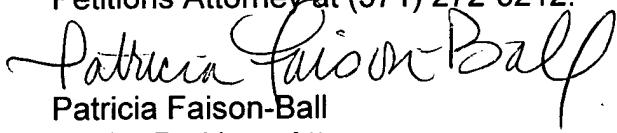
The record will also be clarified that the attorney of record, J. Mark Holland and Associates, only represents Mr. Horwood's interest and not that of Mr. Lovell and that two signatures are required for the prosecution of this application, that of Mr. Horwood's attorney and that of Mr. Lovell. However, the agency will not engage in dual correspondences and will only mail correspondence to the attorney for Mr. Horwood.

As to the response to the restriction requirement entered and the continued prosecution of the application, Mr. Horwood has indicated that Keith W. Lovell has refused to cooperate with the continued prosecution of this application. However, as indicated above, all responses must bear the signature of the attorney for Mr. Horwood and that of Mr. Lovell and thus the response to the restriction requirement cannot be accepted.

37 CFR 1.47 (and a petition thereunder) is only applicable to the initial filing, and PTO acceptance, of an application wherein one or more of the named inventors refuses to sign, or cannot be located so as to sign, the oath or declaration filed under 37 CFR 1.63. Where, as here, all the named inventors have executed the original oath or declaration under 37 CFR 1.63, 37 CFR 1.47 has no relevance to the application. See MPEP 409.03.

Accordingly, notification will be forwarded to Technology Center 3751 that the petition under 37 CFR 1.47 is dismissed and that response to the restriction requirement fails since it isn't signed by all the parties pursuant to MPEP 402.10.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
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Office of Petitions